

Appl. No. 09/785,700
Amdt. dated July 20, 2004
Reply to Office Action of May 20, 2004
Docket No. 6169-156

IBM Docket No. BOC9-2000-0017

REMARKS/ARGUMENTS

These remarks are made in response to the final Office Action of May 20, 2004 (Office Action). As this response is timely filed within the three-month shortened statutory period for reply, no fee is believed due.

In paragraph 3, pages 2 through 8 of the Office Action, the Examiner has rejected claims 1-24 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,611,811 to Deaton, *et al.* (Deaton) in view of U.S. Publication No. 2002-0010757 to Granik, *et al.* (Granik). This rejection is respectfully traversed.

In response to the Office Action, Applicants have amended the claims to read "potential consumers of one or more products" in place of "consumers in need of one or more products." Applicants believe this amendment adds clarity to the application without changing the scope or nature of the subject matter being claimed. Accordingly, no new matter has been added.

Prior to addressing the rejections on the art, a brief review of the Applicants' invention is appropriate. The Applicants have invented a method, system, and apparatus for providing promotional material to consumers. In one embodiment of the invention, a computer communications session can be established between a merchant computer system and a third-party, remote shopping stimulation system. The third-party, remote shopping stimulation system can read consumer purchase information from the merchant computer system. The consumer purchase information can include consumer identifying information and product information.

Based on the consumer purchase information, one or more potential consumers of one or more products can be identified. In the third-party remote shopping stimulation system, the promotional material corresponding to the product(s) can be associated with the identified consumers. Accordingly, the promotional material can be made available to the identified consumers using a promotional material delivery system.

Turning to the rejections on the art, it is asserted that Deaton teaches each limitation recited in independent claims 1, 10 and 16 except for failing to teach a third-party remote system. Granik is alleged to teach a third party advertisement system that targets promotions to users based on, in part, the users' purchase information.

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It is respectfully submitted that the combination of Deaton and Granik fails to teach or suggest Applicants' claimed invention. Claims 1, 10 and 16 specify, in part, that the merchant computer system interacts with a shopping stimulation system that is a third-party system. The claims further state that the shopping stimulation system reads consumer purchase information from the merchant computer system, identifies potential consumers of products, and associates promotional material with identified consumers.

In contrast, Deaton teaches that a consumer can log into a store Website, such as an online shopping site for a merchant. At column 127, lines 12-15, Deaton states that "In operation, customer personal computer 322 may be used to log on to a web site associated with a store." Thus, Deaton does not teach a third-party system that can be used by a merchant system. Rather, Deaton teaches that a merchant system, such as a merchant web site, performs the incentivising disclosed therein.

Granik is alleged to teach a third party system. Granik describes a method and apparatus for allowing a user to control what advertisements are pushed to their web browser while on-line based on preferences the user specifies when registering for the filtered advertisement service. This is in essence a brokering system in the sense that the third-party Granik system is matching users with advertisers who must all register with the service. Granik teaches an on-line advertising system in which users are required to register, provide profile information, and log-on every time they want to use it. They are rewarded for usage of the system and an account is kept for each user showing a balance that builds with usage. At the same time, advertisers (i.e., merchants) sign up with the system so that they can run advertising campaigns. The users' profile and preference information is made available to the advertisers so that the advertisers can target ads to select users based on their profiles and stated preferences. Whenever the user want to use the system, the user simply logs into the system. Ads are presented to the user and the user is rewarded for viewing or clicking through the ad. Contrary to the office action, the users' purchase information is not used to determine which ads are presented to the user. Rather, the user may be rewarded with user incentives (i.e. discounts) in those instances when a user makes a purchase. As such, purchase information is only used to provide discounts to the user, not to target advertisements and/or promotions to the user.

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Accordingly,, it is respectfully submitted that even if properly combined, the combination of Deaton and Granik fails to teach or suggest Applicants' claimed invention. The present invention provides a method and apparatus for delivering sales incentives to a customer that are made on-line or in a conventional store. The incentives are pro-actively offered and are based, in part, on product information, such as the expiration and/or expected life expectancy of the items purchased by consumer. The incentives for items be being promoted may be delivered directly to the consumer (mail, e-mail, etc.) or indirectly (coupons, frequent shopper points, special, etc.). In addition, the product information in the merchant's inventory management system may be used to identify excess inventory situations and/or soon to expire inventory situations and stimulate shoppers to buy those products by delivering incentives for said product(s) directly or indirectly the next time they shop in the store or on-line. Furthermore, to gain this benefit, a user needs only register once with their vendor of choice.

As such, the present invention is different from any combination of Deaton and Granik. For example, if a merchant has a large quantity of a product that is nearing its shelf life and decides to try and sell it before the product shelf life is expired, the system recognizes this situation from the product information and this product is identified to the shopping stimulator logic to begin incentivizing registered customers to buy the product. The customers are automatically and specifically targeted based on the their prior purchasing habits in the store or on-line. The customer may be contacted directly or indirectly and the customers may be contacted in a variety of ways other than through a web browser alone. The system targets customers in a pro-active manner by providing an incentive to purchase, not in a reactive manner by giving a coupon after a consumer has already made a purchase.

However, the combination of Deaton and Granik fails to teach or suggest this aspect and, in fact, actually teach away from the claimed invention. First, the combination does not teach or suggest using product information from a merchant computer system's inventory management system may be usefully integrated with the system that delivers the incentives in a pro-active manner. Second, the logic used by Deaton and Granik depends on delivering a discount to the customer based on an analysis of the items selected for purchase while the logic of the present invention is based on detailed purchasing habits and not just limited to granting discounts.

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Furthermore, to obtain this benefit, a customer need to register only once with their vendor of choice while Deaton and Granik requires one to register twice: once with the vendor and once with the advertising broker. In addition, the merchant now has to register with the third-party advertising system, which is a step not required by the present invention.

But, most significantly, because Granik's system calls for multiple merchants to be presenting ads, it is likely that the customer will pick a merchant that is different than the one that Deaton would bring to the party. Thus, using the combination of Deaton and Granik is likely to cause the consumer to shop somewhere else than where Deaton intended. Finally, as previously discussed, Granik is limited to delivering advertisements to web browsers only based on a customer's profile rather than their actual purchasing patterns/habits. An amount of an incentive may be set for an actual purchase, but the purchase itself is not used to determine which ads to present to the user. As a result, it is not possible to combine Deaton and Granik to deliver an incentive specifically targeted to a customer that is most likely going to purchase the item the vendor wants to sell. This is also true in instances where a new product is being offered. Once this condition is recognized by the system, the product is identified to the shopping stimulator logic to begin contacting consumers who based on their profile and past purchasing history, are the most likely to purchase the new item. Note that in this scenario, no financial incentive is offered. Deaton and Granik, however, are unable to handle this scenario as both are designed to offer financial incentives to customers, not simply promote the item based on its merits.

Regarding claims 2 and 17, it is asserted that Deaton teaches that the step of identifying potential consumers of products includes "determining a product consumption rate from said consumer purchase information to identify said one or more potential consumers of one or more products." Deaton does not teach or suggest the additional step of "offering said one or more consumers equivalent, but different products." Nevertheless, the office action states that the offering of generic items teaches the aspect of "offering said one or more consumers equivalent, but different products." This is respectfully traversed.

It is respectfully submitted that Deaton fails to teach or suggest offering "equivalent, but different products." "Equivalency" is the key here. If the chosen item was a brand name (e.g.,

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Cadillac or Lincoln), the consumer would not be satisfied with a generic (e.g., Hyundai). Brand name purchases are known to be less cost sensitive. In addition, merchants want consumers to buy higher priced items where there greater margins. The present invention does this by offering "equivalents," not generics. As such, Deaton fails to teach or suggest this aspect of the present invention.

As the combination of Deaton and Granik fails to teach or suggest each limitation recited in the Applicants' claims, withdrawal of the 35 U.S.C. § 103(a) rejection with respect to claims 1-24 is respectfully requested.

The Applicant believes that this application is now in full condition for allowance, which action is respectfully requested. The Applicant requests that the Examiner call the undersigned if clarification is needed on any matter within this Response, or if the Examiner believes a telephone interview would expedite the prosecution of the subject application to completion.

Respectfully submitted,

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Gregory A. Nelson, Registration No. 30,577
Brian K. Buchheit, Registration No. 52,667
Theodore M. Green, Registration No. 41,801
AKERMAN SENTERFITT
Post Office Box 3188
West Palm Beach, FL 33402-3188
Telephone: (561) 653-5000